

Policing with a human face

An Essay by T. Michael Mboya¹

Note:

This essay was written when the Government of Kenya was undertaking what it reckoned were radical reforms in the country's police force. For a long time the police force (nowadays the police service) has been the least trusted public institution in Kenya. The point is made in most of the annual reports by *GfK: Verein – The Global Study on Trust in Professions* – that came out over the course of the second decade of the twenty-first century. And so the Kenyan Government came up with a *Revised Police Reforms Program Document 2015–2018*² and went out on a highly publicized marketing of the transformations in the institution.³ Citizens who only knew the brutal side of the police were admonished to see the policemen and -women as human beings whose job was to protect them and keep the peace. The article, a retelling of the experiences of its author, sought to engage this new image of the police that was being promoted vigorously by the state. It was unsuccessfully submitted to the country's leading dailies for publication.

I was pulled over by the police.

I only noticed the police Toyota Land Cruiser pick-up truck and the NTSA Peugeot 308 hatchback after I had eased the car off the road. There were two or three white saloon cars besides. I assumed I had stumbled into yet another "traffic police crackdown". These checks had become rather

¹ T. Michael Mboya, Moi University; contact: tommichaelmboya@gmail.com

² www.npsc.go.ke/index.php/downloads/download=61:revised

³ <https://www.theeastafrican.co.ke/news/ea/Kenya-in-major-police-reforms/4552908-4757974-h7e3nmz/index.html>

frequent lately. I had everything Kenyan motorists are required to have with them in their cars, and so I had no reason to be afraid.

I duly obliged with the policeman's polite request to see my Driving License by handing him the document. He did not look at it. Instead, addressing me as Daddy, he told me that I was guilty of what would later be written on the Cash Bail receipt as "violation of speed". I was driving at 64 kilometres per hour on a stretch of road where I should not have done over 50 kilometres per hour, he said.

I did not even see the speed limit sign, I mumbled, more to myself than to him. But he heard. Daddy, this is a centre; the speed limit in all centres is 50 kilometres per hour.

From that explanation I gathered that speed limit signs need not be put up. Drivers are expected to use their common sense and, for instance, know that once they are driving through a centre then they must not exceed 50 kilometres per hour. Fair enough, but what exactly is a centre, and what are its bounds? The questions become especially moot when one is driving on the main roads of what was formerly known as Western Province, as I had been doing. "Centres", whether originally the sites of markets or clusters of shops, in that part of the country have stretched along the roads and now virtually touch one another. Going by common sense a driver may, for example, have to drive the almost 80 kilometres from Kapsabet to Kisumu via Chavakali at 50 kilometres per hour. That would be a veritable test of patience.

Okay, I said; what was I expected to do?

After stopping a few more cars and relieving the drivers of their driving licenses the policeman asked me to drive into the nearby police station. And No, I could not get back my license. It would be given me in the station.

The policeman did not accompany me. He was already flagging down other offenders as I made my way to the station. It was not difficult to identify the office I was expected to go into. A small crowd was milling around its open door. What I immediately took to be a general reluctance to go into the office was confirmed to me when the crowd unhesitatingly allowed me passage through it. I am Kenyan. This is not usual behaviour with us. As you see in our driving culture where we find it almost impossible to give way, we are fiercely competitive. "Step on a person and pass", Poxi Presha, one of our great street poets, had summed up the attitude.

I greeted the friendly faced policewoman behind the only desk in the office and informed her my reason for being there. I then asked her what was required of me. After some loud consultation over a cell phone and the arrival of my Driving License the policewoman politely asked me if I was ready to post a cash bail. I replied in the affirmative. She now shouted a general announcement to the crowd outside the office. Could all who wanted to post cash bail come in, please? There were mumbles on the outside but no one came into the office.

That did not surprise me. We, Kenyans, are a haggling people. We love our verbal wrestling over things and services that we are meant to pay for – even when there is no possibility of getting what we consider a fair deal. Of course, many a time these bargaining events have outcomes that are not legal. I am a law abiding citizen. I wanted to keep this as straightforward as possible.

Once she had received money from me the policewoman with the friendly face filled in the Cash Bail receipt. Now and then she asked for information that was not in the Driving Licence: my phone number, the make of my car, etc. She then asked me when it would be convenient for me to appear in court over the coming week. Which Court? She named the courts nearest where I had been caught speeding. They are somewhere in between my work place and my village, which are themselves very far apart. In short, the court I was to appear in is not in a place I will ordinarily find myself going without prior arrangement. I had no option. I gave a day. The policewoman informed me that if I did not turn up in court I would automatically forfeit the money I had paid as bail. She then placed the receipt inside my Driving License, which she now handed back.

Just over an hour after I had been pulled over I was back on the road, continuing my journey back to my work place. I was coming from an unplanned, forced visit to my village.

Later that evening as I was organising my stuff, I read the Cash Bail receipt. I was required to appear before the faraway court at 08.00 on the date I had proposed to answer the said charge or in default to forfeit the sum deposited. I understood that last sentence to mean that if I did not go to court then I would not be punished beyond having given up my money. I calculated. I weighed the projected amount I would have to spend on fuel and the time I would spend from work against the sum already deposited, and I reckoned the forfeit a sensible choice.

I did not go to court.

Several days after I had been due in court I received a telephone call from a man who identified himself as a senior police officer based in the station where I had paid my cash bail.

The officer asked why I had not turned up in court, and I answered truthfully. I told him that upon reading the Cash Bail receipt I had understood that I had a choice between turning up in court and forfeiting the money I had paid as cash bail, and I had made my choice. I understood wrong, the man curtly corrected me. Attendance in court was a requirement. Even now, after forfeiting the money I had paid as cash bail, I still had to appear in court.

In all, we had a very friendly conversation that ended with him instructing me to attend court in a couple of days. Perhaps to keep the menace out of the chat the man invited me to pass by his office at the police station on my way to court.

There are invites that, however politely extended, leave you in no doubt that you are being commanded to do something. This was one of them. The trip that I thought I had saved myself from making was on.

I went. I got there at around 10am.

On the advice of friends I had asked a friend of the family, who lives around the centre where the courts are situated, to accompany me. I had been told that in the event I would be asked to pay a fine by the court, as was most likely to happen, I would need someone to pay the money. There is no provision for the convicted offender to pay, even if she has the money on her. The friend that I was with waited outside the senior policeman's office.

An avuncular figure, the senior policeman is quite a sport. We talked about this and that. When he found out that I am a lecturer in a public university he became genuinely interested in work talk. Was he steering the conversation away from the case whose difficulty he had just sketched for me? You pick up some things in the course of life. Like, in Kenya when a police officer hammers on the intractable nature of your case, she is raising the value of the bribe to be paid.

The policeman now wanted, among other things, to understand what the strike we were on at the time was really about. How were we surviving now that we had not been paid our salaries? And what did I make of the changes that the Cabinet Secretary of Education was making in the sector?

We agreed that, indeed, we were living in interesting times. He had himself recently been taken through the harrowing experience of police vetting and he was obviously proud of having come through successfully. However, he was still miffed at being asked about how he had acquired a piece of land in his village, where he had built his home. After thirty years of work, in truth? Were policemen so unlike other Kenyans that they could not save money and buy property?

There was something like regret in his voice when he explained to me for the repeated time that my failure to attend court had triggered a warrant of arrest that he was obliged to execute. I assured him that I understood, it being work and all. He summoned a police constable and instructed him to accompany me – he pointedly referred to me as his lecturer friend – to court.

The constable was talkative. He liberally referred to the Bible. That could have been his way of acknowledging the friend I was with. She goes to a church whose female members observe an immediately recognisable dress code. I recall particularly that he time and again came back to Matthew 5:25: “Settle matters quickly with your adversary who is taking you to court. Do it while you are still together on the way, or your adversary may hand you over to the judge, and the judge may hand you over to the officer, and you may be thrown into prison.”

The constable was confident that I would reach some understanding with the prosecutor handling my case. What I had going for me, he said, was that I had willingly presented myself to the court. That put me in very good stead to construct sufficient grounds for the lifting of the warrant of arrest. I would still have to explain why I did not turn up in court in the first place, but, he laughed, being a lecturer who had read numerous books ... that would not be too difficult. And since the prosecutor would be on my side The primary charge itself was a misdemeanour, the constable reassured. At most I would pay a fine of two thousand shillings. So if I had five thousand shillings on me, it would be well.

There it was, finally: the demand. The subtlety of the proposition did not mask the starkness of the man’s message. I simply refused to play along. Perhaps if I had better appreciated the risk I was taking I would have seen that it was in my interest to settle matters with my adversary – in this case embodied by the senior policeman, obviously – through the constable. I was feeling sufficiently irritated, mostly as a result of the financial costs I had already incurred, to be reckless. I played dumb.

Once at the courts the constable went into the prosecutors' office. I was given the impression that my file was in the office and it would be taken to one of the courts. I would then be summoned.

We waited. Our friend started preaching to me to get saved. The end is nigh, and it will be a pity to leave me behind, etc. I was enjoying myself. After some time, I went into the office to find out what was going on. The constable told me that the prosecutor who was handling my case was occupied. She was handling too many cases that morning.

It occurred to me that I was being given time and space to make a sensible move. I did not. We waited. Our friend preached. She, too, had independently picked up what was afoot, and she lamented the fact that corruption was thriving in the house of justice. Around lunch time I again went into the office. The police constable said the prosecutor had been called to chambers. We waited.

After 2pm the constable ushered us into a courtroom. Was that a sign? But of what? It will play as it will, a friend used to say in situations where she had decided to sit back and watch things resolve themselves.

We were listening to a case when the constable sneaked to my side and whispered that some confusion had occurred. The prosecutor had finally turned up but only to say that the court had already decided that the case on my failure to attend court would come up for mention a week hence. I was now going to deal with this charge and only go to the speed violation case once this one was disposed of. It was going to take some time. But if I could turn up early the following day the constable would personally assist me expedite the disposal of these small cases. Both of them.

No, I declined. I was going to come back on the date set by the court. With a shrug of the shoulder the constable left. We heard the case that was in progress for a little longer, and then we, too, left. It was slightly after 3pm.

I was back in the law courts a week later. This time my wife came along. For the record: I was not avoiding another round of evangelization. My wife is a committed Christian, and she seemingly cannot help hopefully slipping to me the odd encouraging word every now and then.

The case, when it finally took off, was an anti-climax. It was supposed to be a mention of the case on non-attendance but, on my request, the judge allowed me to explain why I did not turn up in court when I was due. In a few short minutes the judge lifted the warrant of arrest (he noted the absence of any police input into the case in passing) and then convicted me on my

own plea of guilty. But he determined that the sum I had paid as cash bail was punishment enough.

I agree. I had been punished enough. More than enough, actually, given that the dailies were full of reports of courts in this land dismissing such charges. I may be wrong but I think going up to around 20 kilometres per hour over the speed limit is acceptable⁴. The case should have been dismissed. But I was not about to fight for my rights. I am Kenyan. I know how it would have played out. I probably would have ultimately, after several mentions and a hearing that would have run over six months at the least, had a judgement in my favour. And so, instead, I am sharing this with you in the admittedly very feint hope that we can start talking about the practical workings of our justice system and our lived values.

I find myself wistfully thinking that perhaps the most important point about my experience is that I had been afforded the opportunity to interact with the much hyped human face of our police service. Is it possible to see that face as a smiling, clown's mask behind which there is a more complex human face?

⁴ This was the determination of the High Court of Kenya in the Criminal Revision No. 160 of 2016 *Ankush Manoj Shah v Republic* [2016] eKLR (<http://kenyalaw.org/caselaw/cases/view/132060>). See also Criminal Revision Application No. 33 of 2017 *Waithaka Mwangi v The Director of Public Prosecutions* case [2018] eKLR (<http://kenyalaw.org/caselaw/cases/view/164619/>) for a continuation of this conversation at the time.